

**United States Department of Labor
Employees' Compensation Appeals Board**

S.R., Appellant

and

**DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL
CENTER, Jackson, MS, Employer**

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**Docket No. 09-2332
Issued: August 16, 2010**

Appearances:

*Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 23, 2009 appellant, through her representative, filed an appeal of an August 7, 2009 merit decision of the Office of Workers' Compensation Programs which rescinded authorization of an electric/motorized wheelchair and denied authorization for a vehicle wheelchair lift. Pursuant to 20 C.F.R. §§ 501.2 and 501.3, the Board has jurisdiction over the merits in this case.

ISSUE

The issue is whether the Office properly rescinded authorization of an electric/motorized wheelchair and denied authorization for a vehicle wheelchair lift.

FACTUAL HISTORY

On December 11, 2000 appellant, then a 37-year-old registered nurse, filed an occupational disease claim for a back injury as a result of lifting and moving of patients. The Office accepted the claim for: low back strain, opiate dependence, aggravation of lumbar degenerative disease at L4-5 and L5-S1; displaced disc L4-5, L5-S1; mechanical complication of

nervous system device, implant and graft; adjustment disorder with mixed anxiety and depressed mood; anxiety state; lumbar spine surgery; and insomnia due to medical condition. The condition of S1 arthropathy was not accepted. Appellant lost intermittent time from work prior to total disability as of September 1, 2002.

In a September 14, 2007 report, Dr. Robert W. McMurray, a Board-certified internist and rheumatologist, diagnosed S1 dysfunction. He noted that appellant had a mobility limitation that significantly impaired her ability to participate in one or more mobility-related activities of daily living and which could not be resolved by the use of an appropriately fitted cane or walker. Dr. McMurray requested that she be authorized for a motorized wheelchair and necessary accessories "for medical necessity." On September 28, 2007 the Office authorized the purchase of a power wheelchair for appellant's vehicle. Appellant later contacted the Office regarding authorization of a wheelchair lift device for her vehicle.

On January 11, 2008 the Office requested an Office medical adviser to provide an opinion as to whether the electric/motorized wheelchair appellant received and the requested wheelchair lift device for her vehicle were medically necessary due to the accepted conditions. In a January 15, 2008 report, the Office medical adviser noted that Dr. McMurray stated that the need for all equipment was S1 dysfunction, which was not an accepted condition. He advised that appellant's recent examinations did not establish the need for a wheelchair as she walked with no aid or a cane. Appellant's straight leg raising test was negative, motor and sensory testing were normal, there was no atrophy and there was no evidence of arterial or venous insufficiency to the lower extremities.

In a January 24, 2008 letter, the Office advised appellant that its Office medical adviser determined that the wheelchair and associated lift should not be authorized. It requested that appellant have her treating physician provide additional medical opinion regarding the causal relation between the diagnosed S1 dysfunction and the accepted employment conditions. Appellant was given 30 days to provide the requested evidence. No response was received.

On March 7, 2008 a second Office medical adviser opined that the S1 joint condition was not caused or contributed to by the work injury. The record did not support a need for an electric wheelchair as appellant walked with no support or walked with a cane and had normal motor and sensory findings in both legs with no atrophy or vascular disease.

The Office referred appellant to Dr. Philip J. Blount, a Board-certified physiatrist, for a second opinion. In a May 13, 2008 report, Dr. Blount noted the history of injury, his review of the medical records and appellant's complaints. On neurological examination, he noted that appellant had an antalgic gait. Appellant refused to do a gait analysis without her cane and was not able to perform heel and toe walking secondary to pain. Dr. Blount noted appellant's concerns about falling while testing her balance. Bilateral upper and lower extremity reflexes were normal and straight leg raise was equivocal. He advised that the accepted conditions could have caused injury to appellant's S1 joints, but advised the diagnosis was one of exclusion. Dr. Blount found that appellant's physical examination and imaging were not reliable. Since she failed to improve with S1 joints injections, he believed that the S1 joints were not a significant pain generator. Dr. Blount advised that appellant presented with pain without the obvious objective findings. He opined that, while appellant had a pain syndrome, there was no

neurologic condition that resulted in weakness to her lower extremities. Dr. Blount found that appellant's inability to walk was not related to spine pathology, but rather to pain and pain perception. He did not recommend the use of power mobility for appellant as it would only promote inactivity and further deconditioning.

The Office found a conflict in medical opinion regarding whether appellant's S1 joint conditions were employment related and whether the electric wheelchair she received should have been authorized. It referred her, together with a statement of accepted facts, a list of questions and the medical record, to Dr. Guy T. Vise, Jr., a Board-certified orthopedic surgeon, for an impartial medical examination.

In a July 10, 2008 report, Dr. Vise reviewed the records and the statement of accepted facts, noted appellant's current complaints and provided findings on examination. He stated her subjective complaints were not consistent with the objective findings and that symptom magnification was evident. Since the medical record reflected multiple falls, he agreed with Dr. Blount's opinion that appellant's frequent falls could have led to sacroiliac joint pain; however, the primary pain generator was still undiscovered as every procedure appellant underwent failed to relieve her pain. She had a multitude of diagnoses in the rheumatologic, orthopedic and pain specialty fields. Dr. Vise advised that appellant's neurological examination and upper extremity examination were normal. He noted a very small difference of one centimeter in circumference of the thigh and calf on one side of the lower extremity, but found no atrophy on examination and visual inspection. Dr. Vise stated that appellant was independent in ambulation with a cane and that he watched her leave her vehicle unassisted and walk from a concrete parking lot to a wheelchair ramp and into the building, approximately 200 feet. He related that appellant's reasons for the electric wheelchair were to limit walking while going to her child's ball games and a fear of falling. Dr. Vise noted that when appellant was asked how she would get around without an electric wheelchair, she stated that she could drive a car independently and use a cane. Appellant indicated that, with the assistance of a cane, she could do a certain amount of activities of daily living or just sit at home and miss her child's school sporting events.

Dr. Vise found that the physical examination did not support the use of an electric wheelchair. Appellant had no upper extremity weakness and no neurologic deficits in her legs. While she underwent multilevel lumbar spinal fusion, there was no evidence of dislodgement of hardware, no hardware breakage or anatomic complication from the procedure on multiple postsurgery imaging studies. Dr. Vise concurred with Dr. Blount that appellant did not need an electric wheelchair. He explained that his examination revealed that appellant walked safely and slowly with a somewhat widened base gait and was able to come into and out of the building during wet, rainy, and hazardous conditions without difficulty. Dr. Vise opined that her psychosocial component was much greater than any physical component and appellant had a significant psychological problem of fear avoidance and fear of falling. He stated that there was no medical reason for her falling and she came in and out of the office under rather adverse physical circumstances. Dr. Vise opined that appellant had a preference, rather than a medical necessity, for an electric wheelchair. He explained that, for both biomedical and biopsychosocial reasons, appellant would be best served by not using an electric wheelchair.

In a July 21, 2008 report, Dr. Mark McLain, a Board-certified psychiatrist, found that appellant was totally disabled. He indicated that appellant's chronic and debilitating pain resulted in chronic and debilitating depression and anxiety.

In a September 4, 2008 letter, the Office notified appellant that it proposed to rescind the authorization for her electric/motorized wheelchair and denied her request for a vehicle lift based on the opinion of Dr. Vise. It indicated that it would not take away appellant's wheelchair. Appellant was accorded 30 days in which to provide additional evidence or argument. She did not respond.

In a March 10, 2009 decision, the Office rescinded authorization for an electric/motorized wheelchair and lift. It found that the weight of medical opinion did not establish that the wheelchair and vehicle lift were necessitated by her accepted medical conditions.

On March 23, 2009 appellant requested a telephonic hearing, which was held on June 8, 2009. She contended that she needed a wheelchair because she often fell, with or without the use of her cane.

By decision dated August 7, 2009, an Office hearing representative affirmed the March 10, 2009 decision.

LEGAL PRECEDENT

It is well established that, once the Office accepts a claim, it has the burden of justifying the termination or modification of compensation benefits. This holds true where, as here, the Office later decides that it erroneously accepted a claim. In establishing that its prior acceptance was erroneous, the Office is required to provide a clear explanation of the rationale for rescission.¹

Section 8103 of the Federal Employees' Compensation Act² provides that the United States shall furnish to an employee who is injured while in the performance of duty, the services, appliances and supplies prescribed or recommended by a qualified physician, which the Office considers likely to cure, give relief, reduce the degree or the period of disability, or aid in lessening the amount of the monthly compensation.³ In interpreting this section of the Act, the Board has recognized that the Office has broad discretion in approving services provided under the Act. The Office has the general objective of ensuring that an employee recovers from his injury to the fullest extent possible in the shortest amount of time. The Office therefore has broad administrative discretion in choosing means to achieve this goal. The only limitation on the Office's authority is that of reasonableness. Abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are

¹ *Walter L. Jordan*, 57 ECAB 218 (2005).

² 5 U.S.C. § 8101 *et seq.*

³ *Id.* at § 8103.

contrary to both logic and probable deductions from established facts. It is not enough to merely show that the evidence could be construed so as to produce a contrary factual conclusion.⁴

While the Office is obligated to pay for treatment of employment-related conditions, appellant has the burden of establishing that the expenditure is incurred for treatment of the effects of an employment-related injury or condition.⁵ Proof of causal relationship in a case such as this must include supporting rationalized medical evidence.⁶ Therefore, in order to prove that the electric/motorized wheelchair and vehicle wheelchair lift are warranted, appellant must submit evidence to show that such equipment is for a condition causally related to the employment injury and is medically warranted. Both of these criteria must be met in order for the Office to authorize payment.⁷

Section 8123(a) of the Act provides that, if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.⁸ The implementing regulations state that, if a conflict exists between the medical opinion of the employee's physician and the medical opinion of either a second opinion physician or an Office medical adviser, the Office shall appoint a third physician to make an examination.⁹ When there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.¹⁰

ANALYSIS

On September 4, 2008 the Office advised appellant that it proposed to rescind the acceptance for her electric/motorized wheelchair and deny authorization of the vehicle lift based on the impartial medical opinion of Dr. Vice.¹¹ It had developed the issue of whether appellant had any injury-related S1 joint conditions and whether the electric wheelchair she received should have been authorized. The Office properly found that a conflict existed between Dr. McMurray, who indicated that appellant needed an electric wheelchair, and Dr. Blount, a

⁴ *Daniel J. Perea*, 42 ECAB 214 (1990).

⁵ *See Dona M. Mahurin*, 54 ECAB 309 (2003); *see also Debra S. King*, 44 ECAB 203, 209 (1992).

⁶ *See Debra S. King, id.*; *Bertha L. Arnold*, 38 ECAB 282 (1986).

⁷ *See Dona M. Mahurin, supra* note 5; *see also Cathy B. Millin*, 51 ECAB 331, 333 (2000).

⁸ 5 U.S.C. § 8123(a); *see Y.A.*, 59 ECAB ____ (Docket No. 08-254, issued September 9, 2008).

⁹ 20 C.F.R. § 10.321.

¹⁰ *V.G.*, 59 ECAB ____ (Docket No. 07-2179, issued July 14, 2008).

¹¹ The Board notes that when the Office originally authorized the purchase of a power wheelchair, it failed to request information from Dr. McMurray regarding its necessity for the accepted conditions and failed to consult with its Office medical adviser concerning the purchase of a motorized wheelchair prior to its authorization. *See* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Medical Services and Supplies*, Chapter 3.400.3c(2) (September 1995).

second opinion examiner, who indicated that the electric wheelchair was not medically warranted. It referred appellant to Dr. Vise for an impartial examination to resolve the conflict.

On July 20, 2008 Dr. Vise provided a comprehensive report. He reviewed appellant's medical history and provided detailed findings on physical examination. Dr. Vise advised that appellant's frequent falls could have led to sacroiliac joint pain, but the primary source of her pain was not known as every pain relief procedure she underwent failed to provide relief. On the basis of his physical examination, he found that the use of a wheelchair was not necessitated by biomedical and biopsychosocial reasons. Appellant had a normal neurological and upper extremity examination and there were no weakness or neurologic deficits in her lower extremities. Dr. Vise observed appellant walking and found she was independent in ambulation with a cane and could drive a car. She had a preference for use of an electric wheelchair which was predominately based on a psychosocial component as she had a significant psychological problem of fear avoidance and fear of falling. It was not necessitated by her accepted conditions. Dr. Vise's report is based upon a complete and accurate factual and medical background and detailed findings on physical examination. He provided a well-rationalized explanation for his conclusion that an electric wheelchair was not medically warranted. The Board finds that Dr. Vise's opinion establishes that an electric/motorized wheelchair is not a medical necessity.¹² Dr. Vise's opinion is entitled to special weight and represents the weight of the evidence.¹³

While Dr. McLain stated that appellant has chronic and debilitating depression and anxiety resulting from her chronic and debilitating pain, he did not provide any opinion regarding her use of an electric/motorized wheelchair. This evidence is insufficient to overcome the weight accorded to Dr. Vise's impartial medical opinion.

The Office based rescission of its acceptance of appellant's electric/motorized wheelchair on the weight of medical evidence as represented by Dr. Vise's impartial opinion. The Board finds that it met its burden to provide a clear explanation of its rationale for rescission.

With respect to denying authorization for a motorized vehicle lift, the only limitation on the Office's authority in approving services under the Act is that of reasonableness.¹⁴ When appellant requested a motorized vehicle lift, the Office advised her to submit a medical report from her physician explaining how the need for the wheelchair lift device was medically necessary due to the accepted conditions. She failed to submit the requested evidence. Although Dr. McMurray advised appellant had a mobility limitation which significantly impaired her ability to participate in one or more mobility-related activities of daily living, he related such mobility limitation to S1 dysfunction, a condition not accepted by the Office.¹⁵ He failed to provide a rationalized opinion as to why appellant's mobility limitation could not be resolved by

¹² See *supra* note 7.

¹³ *V.G.*, *supra* note 10.

¹⁴ *Daniel J. Perea*, *supra* note 4.

¹⁵ For conditions not accepted by the Office as being employment related, it is the employee's burden to provide rationalized medical evidence sufficient to establish causal relation, not the Office's burden to disprove such relationship. *Alice J. Tysinger*, 51 ECAB 638 (2000).

the use of an appropriately fitted cane, despite the Office's attempt to obtain such clarification. Dr. Vise's impartial medical opinion established that the use of an electric wheelchair was not medically warranted. Therefore, the Office properly determined that the requested vehicle lift would be unnecessary. The Office's denial of authorization for a motorized vehicle wheelchair lift was reasonable and did not constitute an abuse of discretion.

CONCLUSION

The Board finds that the Office met its burden of proof to rescind acceptance of appellant's electronic/motorized wheelchair. It did not abuse its discretion in denying authorization for a motorized vehicle wheelchair lift.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decision dated August 7, 2009 is affirmed.

Issued: August 16, 2010
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board